

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE
OF UTAH, IN AND FOR CARBON COUNTY, UTAH.

THE TIDWELL CANAL COMPANY,
a corporation, et al,

Plaintiffs,

vs.

THE PIONEER DITCH COMPANY, NO. 1,
et al,

Defendants,

D E C R E E.

This cause came on for hearing on the fifteenth day of December A.D. 1902 before Judge C. W. Morse, acting by request of Judge Jacob Johnson the Judge of said court, upon the complaint of the plaintiffs and the answers of the several defendants, and the complaints and answers in intervention, John B. Milner, Esq, appearing for the Farnham Ditch Company, a corporation, and Albert E. McMullen, for himself and the inhabitants of the town of Wellington, and J. W. N. Whitecotton and Charles De Moisey, Esq's appearing for the Tidwell Canal Company, a corporation, the Wellington Canal Company, a corporation, the Alred Ditch Company, a corporation, The Pioneer Ditch Company No. 2, a corporation, and Price Water Company, a corporation, and W. D. Livingston, Esq. appearing for Robert A. Powell, Robert W. Powell, S. C. Powell, John T. Rowley, C. H. Cook, James Gourley, David Gourley, George Smith, Ray Cook, T. H. Auphand, E. D. Fulmer, James Neilson, Mary J. Tollan, H. J. Stowell, William Miller, J. C. H. Sonberg, Hyrum Bellows, Idonia Fulmer, Emily Perkins, Norah Miller, F. M. Ewell, John Keim, James Hansen, Hiram Hansen, John Bryner, Thomas Rhodes, E. T. Jones, J. H. Vannetta, Matt Plautz, Brig Hamilton, Charles Lind, James Bessette, Spring Glen Canal Company, a corporation, Mammoth Reservoir Company, a corporation; and Messrs. W. D. Livingston, and Willon & Smith, appearing for R. C. Miller and Wesley Centry; and Messrs Wilson & Smith, appearing for R. G. Miller, Joseph Castle, D. W. Holdaway, Robert McKechney, Jr., Jessie B. Burrows, W. L. Burrows, David C. Burrows, W. C. Burrows, J. J. Houston, James Christensen, Peter Christensen, Amasa Morley, John E. Inglis, O. G. Kimball, John L. Price, Harriet Lloyd Wilson, Admr. of the Estate of John X. Lloyd, deceased, Isaih Llewellyn, Thomas Llewellyn, Mattie Noakes, whose true name is Martha A. Noakes, J. W. Metcalf, Anthon W. Madsen, Niels M. Madsen, Frank D. Kimball, John Eccles, S. J. Harkness, T. H. Thomas, Andrew Smith, O. G. Kimball and Frank Kimball, jointly, Union Pacific Coal & Coke Company, a corporation, William H. Gardner and B. R. Taylor, jointly, John E. Inglis, Trustee for the Members of the Church of Jesus Christ of Latter Day Saints, residing in Scofield, Ecclesiastical Ward, J. J. Craner; and Thomas C. Hanford, Esq., and M. P. Braffet, appearing for Oren E. A. Elmer, and Thomas C. Hanford, Esq., appearing for Charles

H. McKindrick; and M. P. Braffet Esq., and S. R. Thurman, Esq., appearing for The Pleasant Valley Coal Company, a corporation; and Samuel R. Thurman, Esq., appearing for the Rio Grande Western Railway Company, a corporation; and M. P. Braffet and W. D. Livingston Esq., appearing for John F. Keim, for his individual claim; and J. W. Warf, Esq., appearing for the Pioneer Ditch Company No. 1, a corporation, Sidse Rhodes, William Morgan, Linda Morgan, Price Reservoir & Irrigation Company, a corporation. Albert Grames, Charles Grames, John Crocket, and Alfred Grames, jointly, Joseph Vacher, Lee Vacher and Charles Vacher, jointly; and L. O. Hofman, Esq, appearing for Robert A. Snyder, Daniel Morgan, Joseph Tidwell, Ann Thomas, Jacob Kofford, Joseph Sheya, Henry Bryner and J. Tom Fitch; and A. Saxey, Esq, and Samuel R. Thurman Esq, appearing for Henry Gardner, Niel Gardner, Serenus Gardner, Sylvester Bradford, Theodore Dedrickson, Pleasant Bradford, P. J. Bradford, Charles Bradford, and George Hansen.

The default of the following named parties who were duly served having been entered, to-wit, Lehi Jessen, Jed Raby, Sid Raby, John Doe Raby, J. Rolando, Dominick Oberto, William Featherstone, Hiram Wilcox, George Green, William Potter, J. J. Hoge, James McKune, Mary Doe Goldberg, W. H. Tidwell, Bert Birch, George Perkins, Price Trading Company, a corporation.

Whereupon it was stipulated that the testimony taken at the former hearing of this cause before the Honorable Jacob Johnson, Judge, be admitted and considered as evidence by the court, and divers stipulations by all the parties in said cause were duly filed, and made open court as to what the testimony would be of said parties respecting their several rights in and to the waters of said Price River and its tributaries; and it was finally stipulated in open court that said stipulation as to the testimony of the parties in said cause be made the basis of a decree of this court determining the rights of said parties and all of them; and that said decree be made and entered in accordance with the pleadings and all of the stipulations made in said cause.

Whereupon the cause was by all of said parties subscribed for the decisions of the court and findings of fact and conclusions of law having been expressly waived by all the parties.

Wherefore in accordance with said stipulations, testimony and proofs submitted it is ORDERED, ADJUDGED AND DECREED,

That all the waters of the said Price River and its tributaries are hereby awarded to and distributed among the following named classes and persons, to-wit:-

F I R S T C L A S S

The Farnham Ditch Company through the Farnham Ditch, sufficient water to irrigate 340 acres.

R. A. Snyder, through the Snyder ditch, sufficient water to irrigate 90 acres.
Daniel Morgan, through the Snyder ditch, sufficient to irrigate 20 acres.
Tidwell Canal Company, through the Tidwell Canal sufficient water to irrigate 616 acres.

The Alred Ditch Company, through the Alred Ditch, sufficient water to irrigate 500 acres.

The Pioneer Ditch Company No. 2, through Pioneer Ditch No. 2, sufficient water to irrigate 389 acres.

The Price Water Company, through Price Water Company canal, sufficient water to irrigate 617.5 acres.

The Pioneer Ditch Company No. 1, through Pioneer Ditch No. 1, sufficient water to irrigate 485 acres.

Sidse Rhodes through Pioneer Ditch No. 1, sufficient water to irrigate 80 acres.

Linda Morgan, through Pioneer Ditch No. 1, sufficient water to irrigate 20 acres.

William Morgan, through Pioneer Ditch No. 1, sufficient water to irrigate 15 acres.

S. C. Powell, through Pioneer Ditch No. 1, sufficient water to irrigate 6 acres.

Robert W. Powell, through Pioneer Ditch No. 1, sufficient water to irrigate six acres.

Robert A. Powell, through Pioneer Ditch No. 1, sufficient water to irrigate 70 acres.

Henry Bryner, the Hill ditch, sufficient water to irrigate 12 acres.

John T. Rowley, through the Cook-Gourley ditch, sufficient water to irrigate 8 acres.

C. H. Cook, through Cook-Gourley ditch, sufficient water to irrigate 12 acres.

James Gourley, through Cook-Gourley ditch, sufficient water to irrigate 17 acres.

David Gourley, through Cook-Gourley ditch, sufficient water to irrigate 14 acres.

George Smith, through Cook-Gourley ditch, sufficient water to irrigate 20 acres.

C. H. Cook, through Cook ditch, sufficient water to irrigate 10 acres.

J. T. Rowley, through Simmons ditch, sufficient water to irrigate 30 acres.

C. H. Cook, through Simmons ditch, sufficient water to irrigate 3 acres.

John T. Rowley, through Little or Stowell ditch, sufficient water to irrigate 20 acres.

E. D. Fulmer, through Little or Stowell ditch, sufficient water to irrigate 2 acres.

James Neilson, through Little or Stowell ditch, sufficient water to irrigate 2 acres.

H. J. Stowell, through Little or Stowell ditch, sufficient water to irrigate 30 acres.

William Miller, through Little or Stowell ditch, sufficient water to irrigate 3 acres.

J. C. H. Sonberg, through Little or Stowell ditch, sufficient water to irrigate 1 acre.

Ray Cook, through Little or Stowell ditch, sufficient water to irrigate 2 acres.

T. H. Auphand, through Little or Stowell ditch, sufficient water to irrigate 3 acres.

Mary J. Tollan, through Little or Stowell ditch, sufficient water to irrigate 15 acres.

E. D. Fulmer, through Gay ditch, sufficient water to irrigate 35 acres.

James Neilson, " " " " " " " " 20 "

J. C. H. Sonberg, " " " " " " " " 3 "

Hiram Bellows, " " " " " " " " 10 "

Idona Thompson, " " " " " " " " 9 "

Emily Perkins, " " " " " " " " 7 "

Norah Miller, " " " " " " " " 8 "

Spring Glen Canal Company, through Spring Glen canal, sufficient water to irrigate 309 acres.

Rio Grande Western Railway Company, through Spring Glen Canal, sufficient water to irrigate 40 acres.

J. T. Fitch, through Pratt East ditch, sufficient water to irrigate 20 acres.

Rio Grande Western Railway Company, through Pratt East ditch, sufficient water to irrigate 5 acres.

F. M. Ewell, through Pratt-Ewell ditch, sufficient water to irrigate 40 acres.

J. F. Keim, through " " " " " " " " 20 "

J. T. Fitch, " " " " " " " " 7 "

James Hansen and Hyr um Hansen, through Bryner-Hansen ditch, sufficient water to irrigate 30 acres.

John Bryner, through Bryner-Hansen ditch, sufficient water to irrigate 33 acres.

Thomas Rhodes, through Bryner-Hansen ditch, sufficient water to irrigate 18 acres.

Matt Ploutz, through Bryner-Hansen ditch, sufficient water to irrigate 5 acres.

E. T. Jones, through Bryner-Hansen ditch, sufficient water to irrigate 13 acres.

J. H. Van Netta, through Bryner-Hansen ditch, sufficient water to irrigate 12 acres.

Charles Lind, J. B. Bessetta, (jointly) sufficient water to irrigate 8 acres through Lind ditch.

John J. Craner, from Spring creek, sufficient water to irrigate 100 acres.

James Houston, from Tabyune creek, sufficient water to irrigate 48 acres.

The following named parties, sufficient water from Fish creek and its tributaries, to irrigate land as follows, to-wit,

O. G. Kimball (jointly)	- - - - -	50 acres.
J. E. Inglis,	- - - - -	40 "
O. G. Kimball,	- - - - -	130 "
Joseph Castle	- - - - -	25 "
D. W. Holdaway	- - - - -	50 "
Robert McKechney, Jr.,	- - - - -	100 "
Jesse D. Burrows,	- - - - -	80 "
W. L. Burrows,	- - - - -	75.233 acres.
David C. Burrows,	- - - - -	80 acres.

William C. Burrows, - - - - -	80.233 acres.
James Christensen, Peter Christensen and	
Amisa Morley (jointly)- - - - -	80 acres
Thomas Llewellyn, - - - - -	50 "
Isiah Llewellyn, - - - - -	74 "
John L. Price, - - - - -	80 "
Harriet Lloyd Wilson, as admx. estate of John X.	
Lloyd, Deceased - - - - -	30 "
Reubern G. Miller, - - - - -	147 "
Martha A. Noakes - - - - -	80 "
Anton W. Madsen and Neil M. Madsen (jointly) - - -	383 "
(60 acres of which is subject to 63 acres of F. D.	
Kimball and to 15 acres of Andrew Smith.)	
Frank D. Kimball - - - - -	373 "
Andred Smith, - - - - -	15 "
John Eccles - - - - -	70 "
Union Pacific Coal Company - - - - -	7.169 "
John E. Inglis, as trustee for the Church of Jesus	
Christ of Latter Day Saints, Scofield Ward, - - -	1.486 "
S. J. Harkness - - - - -	110 acres
T. H. Thomas, - - - - -	25 acres.

The following named parties sufficient water from Gordon creek to irrigate land as follows, to-wit,

Ann Thomas, - - - - -	115 acres.
Jacob Kofford, - - - - -	40. acres
Charles H. McKendrick - - - - -	50 acres
Albert Grames - - - - -	20 acres
Joseph Shaya - - - - -	9 acres
Joseph Vacher, Lee Vacher & Charles Vacher, - - -	85 acres.
John Crockett and Alfred Grames - - - - -	2 acres.

R. G. Miller, from Trail Canon Fork, sufficient water to irrigate 10 acres.
 R. G. Miller, from Bob Wright Fork, sufficient water to irrigate 63 acres.
 R. G. Miller, from First Water Fork, sufficient water to irrigate 20 acres
 R. G. Miller, from First Corner North Fork, sufficient water to irrigate 10 acres.
 R. G. Miller, from Mud Water Fork, sufficient water to irrigate 10 acres.
 Pleasant Valley Coal Company, for mechanical, mine, agricultural, and culinary uses in Carbon County, .994 of a second foot of water continuous flow, from Price river & tributaries.
 The Rio Grande Western Railway Company, for mechanical railway and culinary uses in Carbon County, one second foot of water, continuous flow from Price river and tributaries.

SECOND CLASS .

Daniel Morgan, through Snyder ditch, sufficient water to irrigate five acres.

Joseph Tidwell, through Snyder ditch, sufficient water to irrigate 25 acres.

Tidwell Canal Co, through the Tidwell canal, sufficient water to irrigate 120 acres.

Wellington Canal Company, through the Wellington canal, sufficient water to irrigate 650 acres.

Ann Thomas, through Hill ditch, sufficient water to irrigate 20 acres.

Mary J. Tollan, through Little or Stowell ditch, sufficient water to irrigate 7 acres.

Charles Lind and James Bassette, through Lind ditch, sufficient water to irrigate 2 acres.

Oren E. A. Elmer, from Spring creek, sufficient water to irrigate 7 acres

Oren E. A. Elmer, from Price river, sufficient water to irrigate 18 acres

J. W. Metcalf, from Fish creek and tributaries, sufficient water to irrigate 75 acres.

R. G. Miller, from Fish creek and tributaries, sufficient water to irrigate 25 acres.

Pleasant Valley Coal Co. for mechanical mine, agricultural and culinary use two tenths of a second foot of water in Carbon County, continuous flow from Price River and its tributaries.

Rio Grande Western Company, for mechanical, railway and culinary uses $\frac{1}{2}$ second foot of water, continuous flow, from Price River and its tributaries.

Jacob Kofford, from Gordon creek, sufficient water to irrigate 5 acres

Joseph Sheya " " " " " " " 9 "

Charles Grames " " " " " " " 20 "

R. G. Miller, from Bob Wright Fork, Gordon creek, sufficient water to irrigate 10 acres.

R. G. Miller, from Corner Canon Fork, Gordon creek, sufficient water to irrigate 30 acres.

Wesley Gentry, from Corner Canon Fork, Gordon creek, sufficient water to irrigate 30 acres.

T H I R D - C L A S S

David Gourley, through Cook-Gourley ditch, sufficient water to irrigate 4 acres.

Rio Grande Western Railway Company, from Price River and its tributaries 24/100 of a second foot of water continuous flow.

F O U R T H - C L A S S

E. T. Jones, through Bryner-Hansen ditch, sufficient water to irrigate 7 acres.

Rio Grande Western Railway Company, from Price river and its tributaries 24/100 of a second foot of water continuous flow.

F I F T H - C L A S S

John Bryner, through Bryner-Hansen ditch, sufficient water to irrigate 7 acres.

James Bryner, through Bryner Plautz ditch, sufficient water to irrigate 15 acres.

S I X T H - C L A S S

T. H. Auphand, through Little or Stowell ditch, sufficient water to irrigate 6 acres.

S E V E N T H - C L A S S

Ray Cook, through Little or Stowell ditch, sufficient water to irrigate 6 acres.

Pleasant Valley Coal Company, for mechanical, mine, agricultural and culinary uses in Carbon County, 228/1000 of a second foot of water continuous flow, from Price river and its tributaries.

The classes and parties entitled to water hereinbefore named are only entitled to the same in the order above set forth, and none of said classes or parties therein named are entitled to any of said waters until all of the proceeding classes and parties therein named have been supplied with the water to which they are entitled as above set forth; and whenever the waters distributed to any one class are insufficient to supply all of the parties in said class with the water to which they are entitled, then said waters shall be distributed to said parties pro rata according to their respective rights as above set forth.

It is further ordered adjudged and decreed that Henry Gardner, Neil Gardner, Serenus Gardner, Sylvester Bradford, Theodore Dedrickssen, Pleasant Bradford, P. J. Bradford, Charles Bradford and George Hansen, jointly, known as the White River Irrigation Company, have the primary right to the use of all the water of the upper or left hand fork of White river, a tributary of Price river, during the irrigating season of each year up to and including June 15th, provided that after June 15th of each year said water shall be turned into the channel of said Price river for the use of the other defendants herein during the remainder of the irrigating season, according to their respective rights under this decree, and provided further that in any year when by reason of any extension of the high water period beyond June 15th, there shall be water more than sufficient for the supply of the parties hereto according to their rights as herein set forth, then the said White River Irrigation Company shall be entitled also to the surplus of said tributary during the time such excess shall exist.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Mammoth Reservoir Company has the right to store and use in its reservoir system, all the waters of Gooseberry creek, including Cabin Hollow creek, its tributary

the said creeks being tributary to Price river, subject to the right however of the other parties to this action to 1600 acre feet of water from said sources each year, which shall be distributed to said parties, after being discharged by said company from said reservoir in such quantities and at such times as may be determined by the water commissioner, or other officer provided by this decree to regulate and distribute the waters involved in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Price Reservoir and Irrigation Company have the right to store 1950 acre feet of the waters of Kyune creek a tributary of said Price river, for reservoir and irrigation purposes and for the propagation of fish.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that T. H. Thomas has the right to have one tenth of a second foot of water flow through his fish pond from Winter Quarters creek for the maintenance of such pond, provided the same after flowing through said pond and supplying the same is discharged into said creek for the benefit of the other parties to this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Oren E. A. Elmer has the right to have one-half second foot of water flow through his fish pond, from below the second dam of J. J. Craner above said fish pond of the waters of Spring creek, a tributary of Price river, for the maintenance of said pond, providing the same after folwing through said pond and supplying the same is discharged into said creek for the benefit of the other parties to this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Rio Grande Western Railway Company has the right to maintain its reservoir near Colton, for the purpose of making ice from certain springs which have hitherto supplies the same, said springs being tributary to Price river provided that after the ice has been removed therefrom in each and every year, the water in said reservoir during the irrigation season shall be turned into said Price river, for the use of the other parties hereto at such times and under such regulations as may be determined by the water commissioner or other officer charded with the duty of regulating and distributing the waters involved in this action, provided further that nothing in this decree shall be construed to prevent said company from discharging the whole of said water into Price river whenever it may be necessary to clean out or repair said reservoir in order to render it safe and secure or suitable for making ice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Union Pacific Coal Company, for the purpose of supplying water for the culinary uses of its tenants at Scofield, has the right to a continuous flow of one tenth of a second foot of the waters of Mud creek, a tributary of Price river, provided that whatever portion of said water is not consumed for such purpose shall be permitted to flow back into the channel of said Mud creek.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That William H. Gardner, and David R. Taylor are entitled to the use of all the waters from Beaver Dam springs on George a creek, a tributary of Price river.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That for the purpose of this cause the irrigation season shall commence on the first day of March and end on the thirtieth day of November of each and every year, and the distribution of the waters involved in this action as provided herein for irrigation purposes, applies only to said irrigation season as herein defined.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the duty of water per acre for the lands irrigated by the parties to this action during the irrigation season of 1903 shall be one second foot of water for each sixty-five acres of land, except as hereinafter provided. That a water commissioner for said year 1903 shall hereafter be appointed by order of the Court, whose compensation shall be fixed in such order and his duty shall be to measure and determine from time to time the quantity of water following in said river, its tributaries and in the ditches diverting water therefrom, and distribute said water equitably among the persons entitled thereto under this decree, using the said duty of water as a basis of said distribution during said year, provided that if said commissioner upon careful inquiry and observation shall find that said duty of water is too high or too low for any specific parcel or parcels of land he may in his discretion decrease or increase said quantity of water so as to sufficiently irrigate said parcel or parcels of land, provided the quantity of water in said river and its tributaries is sufficient to enable him to do so without injury to other parties equally entitled thereto. Said commissioner shall perform any duty or duties respecting the control, measurement, regulation and distribution of said waters as may be required by the court from time to time for the said year 1903, and shall report as often as may be required by the court his proceedings in the discharge of his said duties, and render to the court full information concerning the same as the court may from time to time require. Said commissioner shall have such assistants in the discharge of his said duties, and as may be ordered and directed by the court. It is further decreed that as to the permanent duty of water, and the regulation, distribution and management of the same, after the year 1903, this decree is not final, and the court may after the close of the irrigation season of 1903 hear further testimony relating to the duty of water, and to the control, regulation and distribution of the same, and upon those matters only, and may enter final decree thereon, and for said purpose only jurisdiction of said cause is hereby retained.

It is further decreed that the said commissioner appointed by this court as above stated shall give a good and sufficient bond for the faithful performance of his duties, in such sum as the court may determine to be sufficient, to be approved by the court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the costs of court, service of process, and the transcribing of testimony in this cause shall be paid by the parties hereto in proportion to their interests in said water as provided in this decree; and the compensation, costs and expenses

of said commissioner in the discharge of his duties as herein defined, shall be paid by the parties hereto pro rata according to their interests in the waters distributed by this decree, and at such times as may be hereafter ordered by the court.

Done in open court this Eighteenth day of December, A. D. 1902.

C. W. Morse.

Judge.